

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

KARISA SHYANNE DANIELS,

Petitioner,

v.

ACTION NO. 2:19-cv-523

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Before the Court is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, ECF No. 1, and the Respondent's motion to dismiss, ECF No. 9. On May 8, 2018, Petitioner was convicted in the Circuit Court of Henrico County of attempted capital murder of a law enforcement officer, felony alluding the police, armed burglary, 2 counts of use of a firearm in the commission of a felony and possession of a firearm by a felon. Petitioner was sentenced to eighty-eight years imprisonment with forty-two years suspended. ECF No. 1 at 1. In her petition, the *pro se* Petitioner challenges the constitutionality of this conviction.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(B)-(C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002 Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation entered on December 7, 2020, the Magistrate Judge recommended the motion to dismiss be granted, and the petition be denied and dismissed with prejudice. ECF No. 12. The parties were advised of their right to file written objections to the Report and Recommendation. Neither the Petitioner nor the Respondent filed objections with the

Court and the time to do so has expired.

Having reviewed the record and having heard no objection, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 12, in its entirety as the Court's own opinion. Accordingly, the Respondent's motion to dismiss, ECF No. 9, is **GRANTED**, and the Petition, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of the Respondent.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, she may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, she must do so **within thirty (30) days** from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **DIRECTED** to forward a copy of this Order to Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.

A handwritten signature in black ink, appearing to read "Raymond A. Jackson", with a long horizontal flourish extending to the right.

RAYMOND A. JACKSON
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
Date: January 5, 2021